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UNCLAS MADRID 000639

SIPDIS

STATE FOR EUR/WE, EB/TPP/MTA/IPC
STATE PASS TO USTR FOR BURKEY AND SANFORD
COMMERCE FOR DONALD CALVERT

E.O. 12958: N/A

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SUBJECT: IPR Crimes: The Impact of Spain's Penal Code Reform

1. Summary. On November 25, 2003, the Government of Spain modified its Penal Code to reinforce intellectual and industrial property protection. The revised Spanish Penal Code increases the punishments for crimes against intellectual property and copyright infringements, especially for repeat offenders. It will enter into force on October 1, 2004. End Summary.

2. Organic Law 15/2003 of November 25, 2003 modifies Organic Law 10/1995 of the Penal Code. While the reform affects a wide range of crimes and penalties, for the purpose of this cable we are focusing only on Penal Code changes to intellectual property (IP) crimes. Overall, the reform modifies the penalties to take into account current social trends, including high unemployment, increased internet piracy, and the use of minors and immigrants to commit IP crimes.

3. The highlights of the new Penal Code are as follows:

A) Sentences will be harsher. Persons convicted of piracy can be now given jail sentences between six months and two years in addition to "penalties" which include probation ranging from one to two years. Time served will be cumulative.

B) The production, introduction, importation, possession or distribution of computer programs or any other tool specifically dedicated to counterfeiting copyrighted property will be considered a crime.

C) Police will be allowed to seize pirated products and the instruments and assets used to commit the offense, in addition to the ill-gotten gains from their illegal sale.

D) Facilitating or supplying illegal access to cable or pay-TV (or other electronic media) can be punished by jail sentences of six months to two years.

E) Penalties will be stiffer if organized crime plays a role in the IP crime or if minors under 18 years old are involved. This is an attempt to more effectively fight the mafias that control this lucrative business, the majority of whose members are foreigners, and to protect minors who have in the past been used as a front for these groups.

F) Whereas the 1995 Penal Code required that a victim or aggrieved party (in the case of piracy, the copyright holder) notify police about a crime being committed, now the police can pursue IP criminals without such notification -- an important step forward in combating elusive street sellers of pirated goods, known here as "manteros."

MANZANARES